RAYMOND J.
SEIGFRIED
STATE REPRESENTATIVE
7TH District



COMMITTEES

Health & Human Development, Vice
Chair

Economic Development / Banking /
Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

# **Interagency Pharmaceuticals Purchasing Study Group**

Meeting Minutes | November 15, 2019 House Hearing Room, 2<sup>nd</sup> Floor of Legislative Hall (411 Legislative Ave Dover, DE 19901)

Co-Chair Representative Raymond Seigfried called the meeting to order at 1:37pm.

Members present included Co-Chair Seigfried, Dean Stotler, Steve Groff, Victoria Brennan, Tony Ward, Dr. Richard Margolis, Trinidad Navarro, and Faith Rentz. Representative Michael Smith was present via phone call. Senator Brian Pettyjohn was not present but sent Matthew Revel as a designee. Secretary Kara Odom Walker was not present but sent Steven Costantino as a designee. Co-Chair Senator Nicole Poore, Terry Hollinger, Dr. Marc Richman, and Jim Elder were not present. Also present were Deborah Gottschalk, Esq. of the Division of Research, Dr. Hooshang Shanehsaz of the Delaware Hospital for Chronically III, and Leslie Ledogar of the Department of Insurance. Dr. Trevor Douglass of the Oregon Health Authority and Dr. Jeromie Ballreich of the Johns Hopkins Bloomberg School of Public of Health were present via phone call.

Co-Chair Seigfried presented the meeting minutes from the October 18th meeting and requested a motion.

A motion was made by Mr. Navarro, seconded by Mr. Groff, and unanimously approved by all Study Group members present to approve the October 18<sup>th</sup>, 2019 meeting minutes.

Dr. Douglass then called in and addressed questions that Study Group members had submitted about the Northwest Prescription Drug Consortium prior to today's meeting. Please see Appendices 1 and 2 at the end of these minutes.

Mr. Costantino asked Dr. Douglass if either Oregon or Washington has considered legislation dealing with spread pricing.

Dr. Douglass replied that several bills were introduced in Oregon in the prior year dealing with the issue.

Co-Chair Seigfried thanked. Dr. Douglass for his participation.

Dr. Douglass thanked the Study Group for their time, and ended his phone call.

Co-Chair Seigfried then introduced the next caller, Dr. Jeromie Ballreich. He added that Dr. Ballreich was involved in the creation of SB 34 of the 150<sup>th</sup> General Assembly, which created a Prescription Opioid Impact Fund through a prescription opioid impact fee that is paid by pharmaceutical manufacturers.

RAYMOND J.
SEIGFRIED
STATE REPRESENTATIVE
7<sup>TH</sup> District



COMMITTEES
Health & Human Development, Vice
Chair
Economic Development / Banking /
Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

Dr. Ballreich provided comments on the Study Group's work. He also commented on Maryland's Prescription Drug Affordability Board. Please see Appendix 3 at the end of these minutes.

Dr. Shanehsaz asked what the Board did.

Dr. Ballreich replied that the Board has two principle tasks; establish what Maryland will pay for reimbursements for newly approved drugs, and regulate price increases. He added that the Board is relatively new, and its impact will not be fully known until next year.

Co-Chair Seigfried thanked. Dr. Ballreich for his participation.

Dr. Ballreich thanked the Study Group for their time, and ended his phone call.

Co-Chair Seigfried then distributed a proposed outline for the Study Group's final report, which the Study Group is legally responsible for submitting to all members of the General Assembly and the Governor no later than December 31, 2019. Please see Appendix 4 at the end of these minutes. He said that the topics listed on the proposal were broad section heads, and he asked the Study Group members present for ideas on what should be listed under each section head in the final report.

Ms. Ledogar submitted suggestions for the content to be included in the final report. Please see Appendix 5 attached at the end of these minutes. Ms. Ledogar concluded by recommending that the Executive Summary be written last.

Co-Chair Seigfried then presented draft legislation that he and Ms. Gottschalk had prepared. Please see Appendix 6 attached at the end of these minutes. He said that the idea for this legislation came after learning more about the Northwest Prescription Drug Consortium, but acknowledged that is not necessarily the template that the legislation must follow. He added that he desires to have one individual with the ability to look at the pharmaceutical purchasing landscape at a bird's-eye level and be able to coordinate multiple organizations' purchasing needs, and concluded by saying that this legislation was meant to begin a dialogue and he is open amending it.

Ms. Gottschalk explained how she wrote the draft legislation, and included references to existing pieces of Delaware Code. Please see Appendices 7 and 8 attached at the end of these minutes.

Mr. Costantino said that Medicaid has its own rules and regulations that may not mesh well with the legislation as currently written.

RAYMOND J.
SEIGFRIED
STATE REPRESENTATIVE
7TH District



COMMITTEES

Health & Human Development, Vice Chair

Economic Development / Banking / Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

Mr. Stotler expressed his desire for all pharmaceutical purchasing data to be normalized so that, colloquially, organizations could compare apples to apples.

Dr. Shanehsaz said that having one person who would be able to work across departments and coordinate efforts would be very helpful.

Mr. Groff supported Co-Chair Seigfried's idea but said that he could foresee possible tension between State organizations purchasing pharmaceuticals directly versus organizations processing reimbursements for pharmaceuticals.

Mr. Costantino said that prior to coming to Delaware, he was a legislator in Rhode Island and dealt with many of the same issues that Delaware has.

Co-Chair Seigfried said that he would like to meet with the Study Group members to further discuss the legislation, and asked all members to prepare commentary on what aspects of the legislation they felt should be amended.

Co-Chair Seigfried said that the next meeting will be held on December 13th, 2019.

Several members announced their unavailability for that date.

Co-Chair Seigfried said that the next meeting will be held on December 18th, 2019.

Co-Chair Seigfried then opened the floor for public comment; nobody signed up for public comment.

A motion was made, seconded, and unanimously approved by all Study Group members present to adjourn the meeting at 3:00pm.

These minutes respectfully submitted by:

Scott Murphy Eisenhart
Legislative Aide – Representative Raymond Seigfried

RAYMOND J. SEIGFRIED STATE REPRESENTATIVE 7<sup>th</sup> District



HOUSE OF REPRESENTATIVES STATE OF DELAWARE 411 LEGISLATIVE AVENUE DOVER, DELAWARE 19901

Appendix

COMMITTEES
Health & Human Development, ViceChair
Economic Development / Banking /
Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

## Questions on Dr. Douglass' 11/15/19 Presentation

#### From Dean Stotler -

I have the following questions from the NW Consortium's presentation that are of interest to me to better understand the program and services they offer. I've dropped the entire listing of work group attendees yet included Faith, Steve and Marc as the program owners that I believe are most directly impacted in Delaware in the event my questions support ones they may have or are concerns on their end if we ask them based on their experience. I defer to the collective on what is ultimately provided for NW Consortium to respond to.

With respect to how their program operates and the experiences as it was established:

- What was the vendor response experience upon introducing pricing transparency requirements in their solicitations?
  - Did the number of responding vendors change, if so, how?
  - o Did they experience vendors taking exceptions and how were they addressed?
- How does the NW Prescription Drug Consortium generate funds to support their program?
  - o Are they in any way supported by a General Fund appropriation or funded entirely by fees generated?
  - What is the Admin Fee and how is that structured (per transaction, per script, per consult, etc.)
  - o Are there any additional fees to member organizations aside from Admin Fees?
  - o What say does the members get with regards to how the plan is administered?
    - Is this a Washington and Oregon decision as a Board or are all members by virtue of membership granted a seat on the governing board?
- The presentation claimed overperformance to the tune of \$99.4M, how much of that "over-performance" was generated by moving a brand Rx to a Generic and how much was due to deeper negotiated rebates than the contract was originally awarded at?
- Does the NW Consortium return all rebates and over performance savings back to members at a transaction level or apportion the savings differently?
  - Oo they provide rebates to member states based on actual performance?
    - If so, at what delay between transaction and rebate?
  - o How is this audited and do members get a transparent copy of the entire audit if one is done?
  - How are disputes handled in reconciliation of payments and total net costs?
- How has their membership grown?
  - o Specifically, how many members have "joined" by awarding a contract to the consortium where the consortium submitted a formal proposal in response to a bid?
  - How many formal bid proposals has the NW Consortium submitted since 2016?

RAYMOND J. SEIGFRIED STATE REPRESENTATIVE 71H District



COMMITTEES

Health & Human Development, ViceChair

Economic Development / Banking /
Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

## From Hooshang Shanehsaz -

I would like to ask about Washington and Oregon DOC and what happened with Consortium? Does Consortium have any state programs or are there only PBM accounts?

#### From Faith Rentz -

Sorry for the late response/follow-up. Dean did a great job of laying out questions for Dr. Douglass and our meeting on Friday, 11/15. I only have the following additions/clarifications to Dean's questions:

- Are there differing extents to the way another State would participate in the NW Consortium? I believe from
  prior conversations with the NWC that Delaware could join as a participant or as a governing body. Can the
  NWC provide the group with the specifics of each, including any details on which may be more financially
  feasible and minimize member disruption in terms of plan design/formulary/network and which is aligned with
  Delaware's intent to leverage State purchasing power to obtain prescription drugs and related services at the
  most competitive price.
- To the extent that being a participant versus being a governing body impacts Delaware's ability to have control
  over plan design, formulary, network and clinical management, please describe.
- Did Oregon or Washington modify statute or regulation in order to form the Consortium? What
  recommendations would the Consortium provide to a State considering participation as either a participant or
  a governing body? Is the Consortium able to share any changes in statute or regulation associated with the
  formation of the Consortium?
- Would the NW Consortium be in a position to submit a bid on a PBM Request for Proposal for the State of Delaware Group Health Plan (State employee and retiree plans) expected to be advertised in the July/August 2020 timeframe?



#### **Questions from State of Delaware**

With respect to how the NW Consortium operates and their experiences since established:

- 1. What was the vendor response experience upon introducing pricing transparency requirements in the [Consortium] solicitations?
  - Prior to the creation of the NW Consortium, Washington and Oregon public entities contracted with PBMs or carriers to administer their prescription drug programs. Contracts were traditionally priced where the PBM assessed a low administration fee per claim and captured as their margin the difference between what they billed to the program for covered prescription drugs and what they paid to the pharmacy for dispensing the medication. This difference has commonly been referred to as spread and is undisclosed by the PBM.
  - A guiding principal in the formation of the Consortium was the requirement to bring greater transparency to how prescription drugs are purchased and what players in the supply chain charge for the services they provide. From our inception we have required that PBMs eliminate capturing spread.
  - Another key principle that is salient is that within the Consortium, like entities are given access to the same discount, no matter how large, or small; even the discount card.
  - With PBM's in the congressional spotlight over the last few years for perceived price gouging at the
    expense of plans and participating pharmacies, pass-through PBM contracts have become more
    accepted as the PBM industry looks to move beyond the criticism.
- 2. Did the number of responding vendors change, if so, how?
  - We do not feel that our move to a pass-through price arrangement has resulted in less competitive
    procurements or in increased costs to our participating programs. In fact, because we require the
    contracted price that a PBM has with a pharmacy to be passed through to us, we have benefited more
    as the PBM has improved their pharmacy network agreements.
  - Each year we complete a market check of our network guarantees and performance to assure we
    remain market competitive relative to overall group size and purchasing power. Contractually, if the
    results of our market checks show that we are outside a competitive range we require the PBM to
    update their pricing guarantees. This has led to continued improved performance and savings each
    year.
- 3. Did the Consortium experience vendors taking exceptions? How were they addressed?
  - The biggest challenge we experienced was ensuring we could validate that we are actually receiving
    pass-through pricing. As our experience has increased we have established better controls
    surrounding factors that improve transparency and lower costs.
  - The PBM industry has grown up in an environment of limited oversight with a high degree of opacity.
    There is no single action that creates our transparency, but rather it is a series of requirements that
    yields confidence that we are aware of drug costs, network pricing, and other factors. We continue to
    learn more every year and constantly adapt to ensure that the integrity of our program is maintained
    and that consumers and payers enjoy the benefits.
- 4. How does the NW Prescription Drug Consortium generate funds to support their program?







- The NW Prescription Drug Consortium was established through an intergovernmental agreement between the states of Washington and Oregon in 2006. It does not exist through statutory authority in either state.
- The Benefiting Agencies that oversee the NW Prescription Drug Consortium are the Washington State Prescription Drug Program (WPDP) and the Oregon State Prescription Drug Program (OPDP), which were both created through statute and which both have similar missions.
- Consortium administrative and legal costs incurred are shared equally between the WPDP and OPDP.
- 5. What is the Admin Fee and how is that structured (per transaction, per script, per consult, etc.)
  - PBM services are provided on a per paid claim basis through a base administration fee that is paid to our program administrator for each claim that is processed. This fee serves as the primary compensation for administering the PBM functions of the contract.
- 6. Are there any additional fees to member organizations aside from Admin Fees?
  - There are a limited number of additional optional services that are available to Participating Programs
    in addition to the per claim fee. These include certain clinical services (e.g., Prior Authorizations), en
    prescribing, administrative services only rebate administration, actuary services, and others.
- 7. What say does the members get with regards to how the plan is administered?
  - One of the significant values of the Consortium program is that it can be configured to meet the needs
    of a participating entity. At its highest level, the Consortium offers a cafeteria menu of programs and
    services for program entities. Our offering is not a monolithic solution that is forced upon an entity.
  - For group benefits, participating entities can configure the pharmacy benefit to perform the way they
    require it. For the most part, customization is included in the per claim administration fee and includes
    items like implementation services, benefit configuration, formulary management, utilization
    management, network configuration, member communication and other items.
- 8. Is this a Washington and Oregon decision as a Board or are all members by virtue of membership granted a seat on the governing board?
  - The Consortium leadership are currently discussing how new states can join and how they would fit in the governance structure of the Consortium. The leadership team recognizes that all states face similar challenges and are largely aligned with our philosophy.
  - We also recognize that we are on the same side as our state brothers and sisters and desire to construct a governance that allows meaningful input and position within the Consortium while preserving our vision and mission.
- 9. The presentation claimed overperformance to the tune of \$99.4M, how much of that "overperformance" was generated by moving a brand Rx to a Generic and how much was due to deeper negotiated rebates than the contract was originally awarded at?
  - The over-performance that was referenced is exclusively the difference between what the PBM
    guaranteed would be the pharmacy network performance for brand or generic products in a retail,
    mail or specialty pharmacy network, and the actual performance that was achieved. Simply put over-







performance could equate to spread elimination. None of the over-performance is attributable to any other factor, including rebates. (Because the Consortium's rebate program is also 100% pass-through, manufacturer rebates represent a separate and distinct source of payment since all manufacturer payments are required to be passed through to the participating entity.)

Because the NW Prescription Drug Consortium is a 100% pass-through program, network performance
above the guarantee is passed directly to the Participating Programs and program beneficiaries when
a coinsurance benefit is applied. Plan sponsors pay a simple, predictable, fixed fee per claim and enjoy
100% of the financial performance that pharmacies in their network provide.

# 10. Does the NW Consortium return all rebates and over performance savings back to members at a transaction level or apportion the savings differently?

 Yes, 100% of all pharmacy network over-performance and 100% of all manufacturer rebates, administration fees and other payments made to the PBM by the manufacturer based on the Program's utilization is passed back to the Participating Program. It isn't averaged. It isn't calculated. It is their money and they receive 100% of what is available.

#### 11. Do they provide rebates to participating entities based on actual performance?

Yes, rebates are paid based on the Participating Program's actual performance. Rebates are earned
and paid based on what the PBM has contracted with the manufacturer. As long as the claim is rebateeligible, the PBM pays to the participating program 100% of what is earned in rebates based on the
program's utilization and formulary-specific details.

#### 12. If so, at what delay between transaction and rebate?

- Rebates are billed by the PBM to the manufacturer within 90 days after the close of each quarter.
   Manufacturers, in turn, process the PBM invoice and typically begin making payments on eligible claims within 90 days. Manufacturers continue to make payments each month until all eligible rebatable claims are paid.
- The NW Consortium pays 100% of the collected rebates to Participating Programs every month. We pay 100% of the rebate amount collected by the PBM each month.

## 13. How is this audited and do members get a transparent copy of the entire audit if one is done?

We produce monthly rebate disbursement reports that detail the amount of rebates billed to
manufacturers by product, the amount that has been collected and disbursed, and the amount that
remains outstanding. Some of our rebate agreements allow us to track rebate payments to the eligible
claim. In the future we expect that 100% of our rebates will reconcile to the specific claim where the
rebate is earned.

# 14. How are disputes handled in reconciliation of payments and total net costs?

- All manufacturer rebate contracts are auditable in our agreement with the PBM to ensure that the rebate yield is consistent with the contract in place with manufacturers.
- When manufacturers receive an invoice they will send payment to our PBM or administrator for distribution to the participating program. On occasion a dispute with a manufacturer can occur when







there are discrepancies between amounts manufacturers were invoiced for and the payments received from those manufacturers. Our PBM and administrator work with manufacturers on claims that have been denied a rebate to ensure that all eligible claims are included in rebate payments.

#### 15. How has the [Consortium] membership grown?

- The Consortium started up 2006 with approximately 3,500 participants. As of August 2019, total Consortium enrollment is 1.1 million lives and includes participation from:
- In 2020 we expect to grow by 120k lives.
- 16. Specifically, how many members have "joined" by awarding a contract to the Consortium where the Consortium submitted a formal proposal in response to a bid?
  - Except for one, all programs that have joined the Consortium have done so following competitive
    procurement. This includes not only groups that solicited for Pharmacy Benefit Management services,
    but Facilities seeking GPO program services.
- 17. How many formal bid proposals has the NW Consortium submitted since 2016?
  - It has taken some time to understand our value proposition as we have participated in general PBM
    procurements. The ideal participant in the NW Consortium is a public entity that is seeking greater
    transparency in their PBM program.
  - Our success has occurred when the client was seeking a pass through pricing program or where the bid sponsor was a public entity. Since 2016 we have successfully competed for 4 large employer and public employer contracts in Washington and Oregon.
  - As important, since our inception we have only had 3 entities leave the NW Consortium: one because
    they became fully funded, one because they established their own PBM and the other because they
    were drawn to a generics program that a PBM was making available. This last entity is expected to go
    back out to bid in 2020.
- 18. I would like to ask about Washington and Oregon DOC and what happened with the Consortium? Does the Consortium have any state programs or are there only PBM accounts.
  - In 2014 the Consortium added a traditional GPO program that enables facilities and direct purchasers
    of pharmaceuticals to use the GPO services included within the Consortium program. GPO services are
    provided by a national GPO partner that offers multiple class of trade options for eligible programs.
    The GPO partner also offers other optional GPO programs for Participating Programs to choose from.
  - As with our PBM services, the Consortium does not add any fees or overhead to this program.
  - We have recently started coordinating with one of the largest public sector GPOs in the country to supplement our GPO programs. In the future we look forward to exploring options that more closely coordinate GPO and public sector group purchases to bring better efficiency and cost management to pharmaceutical utilization.

## Questions (received Nov 12)

1. Are there differing extents to the way another State would participate in the NW Consortium? I believe from prior conversations with the NWC that Delaware could join as a participant or as a







governing body. Can the NWC provide the group with the specifics of each, including any details on which may be more financially feasible and minimize member disruption in terms of plan design/formulary/network and which is aligned with Delaware's intent to leverage State purchasing power to obtain prescription drugs and related services at the most competitive price.

- As previously outlined the Consortium leadership is currently engaged in discussions and exploring various models by which a state can participate inside the Consortium.
- It is important to note that plan design/formulary/network decisions are Delaware's to construct with the Consortium. Together, we design a program that works for each customer and inject as much flexibility as possible to deliver the best product possible.
- 2. To the extent that being a participant versus being a governing body impacts Delaware's ability to have control over plan design, formulary, network and clinical management, please describe.
  - As previously outlined plan design/formulary/network decisions are Delaware's to construct with the Consortium. Together, we design a program that works for each customer and inject as much flexibility as possible to deliver the best product possible.
  - We have considerable experience executing this high touch and customer focused approach. SAIF
    corporation for example has 9 distinct formularies. We serve small self-insured groups that require
    less customization but also large groups like the Uniform Medical Plan that covers the employees in
    the State of Washington. UMP controls and dictates their needs to the Consortium and we deliver.
- 3. Did Oregon or Washington modify statute or regulation in order to form the Consortium? What recommendations would the Consortium provide to a State considering participation as either a participant or a governing body? Is the Consortium able to share any changes in statute or regulation associated with the formation of the Consortium?
  - WA RCW 70.14.060 and ORS 414.312 → 414.320
- 4. Would the NW Consortium be in a position to submit a bid on a PBM Request for Proposal for the State of Delaware Group Health Plan (State employee and retiree plans) expected to be advertised in the July/August 2020 timeframe?
  - Yes







2000 ST. PAUL STREET BALTIMORE, MD 21218 P. 14101235-9000 F. 14101235-8963 WWW HEALTHCAREFORALL COM

MARYLAND CITIZENS HEALTH INITIATIVE

# Summary of the 2019 Prescription Drug Affordability Board Act

Marylanders across the state are struggling to afford the prescription drugs they need, often having to choose between their medication and other necessities, like rent and groceries. As prescription drug costs continue to soar, it is critical that the Maryland General Assembly take action to take the first step to ensure that all Marylanders have access to affordable medications, because drugs don't work if people can't afford them.

#### What is being done in Maryland?

In 2019, the Maryland General Assembly passed HB 768 to create a Prescription Drug Affordability Board, an independent body with the authority to evaluate expensive drugs and recommend appropriate methods for addressing these costs, including setting upper limits on what Marylanders would pay for them.

The Prescription Drug Affordability Board will look at prescription drugs with costs that greatly impact Marylanders, including medications that impact the budgets of state, county and local government programs and facilities. Skyrocketing costs can prevent Maryland patients from accessing the prescription drugs they need, cause significant affordability issues for the state, and threaten public health.

Beginning in 2022, with the approval of the Legislative Policy Committee of the Maryland General Assembly, the Prescription Drug Affordability Board may begin to set upper payment limits for prescription drugs purchased by state, county, or local governments. In December of 2023, the Board will recommend whether the General Assembly should pass legislation to expand upper payment limits to all purchases of prescription drugs throughout the state.

#### How a Prescription Drug Affordability Board works:

The Board is composed of five members (plus a Stakeholder Council and staffing support) appointed by the following: one member by the Governor, one by the Senate President, one by the Speaker of the House, one by the Attorney General, and the Board Chair to be jointly appointed by the President and Speaker.

The Board will review prescription drugs that meet any of the following criteria:

- New brand name prescription drugs which enter the market at \$30,000 or more per year or course of treatment;
- Existing brand name medications which increase in price by \$3,000 or more per year or course of treatment;
- Existing generic medications which increase in price by 200% or more per year or course of treatment; and
- Any prescription drug that creates affordability challenges to the Maryland health care system, including patients.

The Board will consider a broad range of economic factors when recommending and setting appropriate payment rates for reviewed drugs, including a review of the entire supply chain, and allowing pharmaceutical manufacturers the opportunity to justify existing drug costs. The Board will thoroughly monitor, assess, and offer recommendation on ways to mitigate the impacts high cost prescription drugs have on Marylanders and our health care system.

Between enactment and 2024, the Board will hire staff, establish upper payment limit methodology, identify sources of public information about industry costs and market pricing practices, enter into agreements with other states already collecting manufacturer-reported data, and recommend ways to make prescription drugs more affordable in Maryland.

For more information, you can visit healthcareforall com or speak with Vincent DeMarco (410-235-9000 or demarco@mdinitiative.org).

Append.x 4

RAYMOND J. SEIGFRIED STATE REPRESENTATIVE 710 District



COMMITTEES
Health & Human Development, ViceChair
Economic Development / Banking /
Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

# Interagency Pharmaceuticals Purchasing Study Group

As Established by HCR 35 of the 150th General Assembly

# Final Report Outline

- Letter of introduction Representative Seigfried and Senator Poore
- Table of Contents
- Executive Summary
- · General background on healthcare expense and pharmaceutical cost
- Membership, purpose, goal, and outcome of HCR 35
- · Current state of operation and the need for change
- State options from across the country
- Preferred option
- Enabling legislation
- Appendices

## Interagency Pharmaceuticals Purchasing Study Group

As Established by HCR 35 of the 150th General Assembly

# Final Report Outline

- Letter of introduction Representative Seigfried and Senator Poore
  - O Possibly use Rep Siegfried's opening remarks and edit to fit here?
- Table of Contents
- Executive Summary
- General background on healthcare expense and pharmaceutical cost
  - O Include or summarize the NCSL article presented in the September meeting
  - O Attach Appendix 4 from July meeting minutes and the accompanying remarks
  - O For Delaware, include the "Pharmaceutical Spend by Area" chart at appendix 6 of the July minutes
- Membership, purpose, goal, and outcome of HCR 35
  - O Paraphrase HCR 35 plus resolution to add Insurance Commissioner to the task force that was made at the first meeting see also Appendix 5 of July meeting minutes
- · Current state of operation and the need for change
  - O Employee Health Faith Rentz Appendix 1 of September minutes
  - Medicaid Steve Groff Appendix 2 of September minutes and charts presented in October meeting
  - Corrections Marc Richman Appendix 3 of September minutes and charts presented in October meeting
  - O Delaware Veterans Home Terry Hollinger (they were on the September agenda do we have any info from them?)
  - O Delaware Psychiatric Center Dr. Walker indicated that this should be included but we do not have any data from them (see Sept. minutes)
  - O Delaware Hospital for the Chronically III Dr. Walker indicated that this should be included but we do not have any data from them (see Sept. minutes)

# O Contract highlights

- DE Medicaid participates in the Sovereign States Drug Consortium
- Discuss role of OMB in state contracting
- Discuss contract audit provisions and who would carry out those audits
- Perhaps include a summary table as follows:

# DISTINGUISHING CHARACTERISTICS OF STATE PHARMACEUTICAL PURCHASING CONTRACTS

Distinguishing characteristics	State Contracts				
	Employee Health	Medicaid	Corrections	Delaware Psychiatric Center	Delaware Hospital for the Chronically III
Use PBM?	Yes – considers essential	No – serves as own PBM	No – serves as own PBM		
Does plan include rebates? If so, where to they go?	Yes — decreases overall purchasing cost	Yes – state Medicaid division retains, and this is included as a budget line item			
Which is more cost effective ~ generics or non-generics	Deep discounts for generics – helps control spending	As a result of rebates, brand name drugs can be more cost effective			
In house pharmacists?	n/a	n/a	5 pharmacists		
Any other salient points of comparison??					

- State options from across the country
  - O LA-Dr. Walker indicate that LA had a problem with lack of covered drugs, so they sought to negotiate directly with insurers
  - O OR attach PowerPoint presentation from October meeting

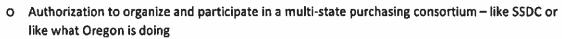


O KY (SB 54) – health carriers will be required to develop and adopt a process for electronically requesting and transmitting prior authorization for a prescription drug by health care providers – notify the covered person or provider no later than 24 hours(emergency) or 5 days (non-emergency) after the request is received (see NCSL article)

## Preferred option

- O Recommend that all State contracts be audited regularly by an auditor who understands the pharmaceutical business and can understand where the costs are going and what cost savings are to be had
- O Require that any PBM with whom the State contracts must be registered with the DOI pursuant to HB 194 (regs are in progress has a June 2020 implementation deadline so stay tuned)
- O Medicaid participates in the Sovereign States Drug Consortium organization of 12 state Medicaid programs to collectively solicit and evaluate offers from manufacturers. QUESTION could we organize something like that to benefit our state employee benefit plan? Is such a consortium out there that we could join? Could we do one contract that would benefit all agencies other than Medicaid listed above?
- Include a discussion of the Pricing Transparency and Reporting resolution passed at the October meeting

# Enabling legislation



## Appendices



Draft: 11/14/2019 10:50 AM

#### SPONSOR:

# HOUSE OF REPRESENTATIVES 150th GENERAL ASSEMBLY

## **HOUSE BILL**

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PHARMACEUTICAL PURCHASING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1	Section 1. Amend § 6303A, Title 29 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows:
3	§ 6303A. General powers and duties.
4	The Director of the Office of Management and Budget shall have the following powers, duties and functions:
5	(11) To appoint and fix the salary of, with the written approval of the Governor, the following administrators,
6	who may be removed from office by the Director with the written approval of the Governor and who shall have such
7	powers, duties and functions in the administration and operation of the Office as may be assigned by the Director:
8	e. A Chief of Pharmaceutical Purchasing, who must be qualified by training and experience to perform
9	the duties of the office.
10	Section 2. Amend Chapter 63A, Title 29 of the Delaware Code by making deletions as shown by strike through
11	and insertions as shown by underline as follows:
12	§ 6317A. Pharmaceutical Purchasing.
13	(a) The Pharmaceutical Purchasing Section of the Office of Management and Budget is established to be the sole
14	state agency to purchase prescription drugs and pharmacy services. The Pharmaceutical Purchasing Section has the power,
15	duty, and function to do all of the following:
16	(1) Purchase prescription drugs, replenish prescription drugs dispensed, or reimburse pharmacies for
17	prescription drugs in order to receive discounted prices and rebates.
18	(2) Make prescription drugs available at the lowest possible cost to participants in the program as a means to
19	promote health.
20	(3) Maintain lists of prescription drugs recommended as the most effective prescription drugs available at the
21	best possible prices.

22	(4) Promote health through the purchase and provision of discount prescription drugs and coordination of
23	comprehensive prescription benefit services for eligible entities and members.
24	(5) Perform the administrative, ministerial, budgetary, and clerical functions necessary to perform the
25	responsibilities under this section.
26	(b) The Chief of Pharmaceutical Purchasing shall coordinate responsibilities under this section with all of the
27	following:
28	(1) Department of Health & Social Services.
29	(2) Department of Correction.
30	(3) Department of Services for Children, Youth, and their Families.
31	(4) Department of Human Resources.
32	(5) Delaware Veterans Home.
33	(6) State Employee Benefits Committee,
34	(c) The Chief of Pharmaceutical Purchasing shall assume such other powers, duties, and functions as the Director
35	of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.
36	(d) The Pharmaceutical Purchasing Section must do all of the following:
37	(1) Perform an annual analysis of current pharmaceutical prices across all State agencies to create a baseline
38	profile. The baseline profile must do all of the following:
39	a. Identify pharmaceutical prices that increase by more than 10%.
40	b. Report percentages of spending by categories of pharmaceuticals.
41	(2)a. Act as the sole state agency to purchase prescription drugs and pharmacy services for state agencies.
42	b. To the maximum extent possible, consolidate contracts to purchase prescription drugs and pharmacy
43	services.
44	c. Consider all of the following when negotiating contracts under this section:
45	1. The baseline profile.
46	2. The economic principle of economies of scale.
47	3. Pharmacy Benefit Managers.
48	4. Spread pricing.
49	5, Rebates.
50	6. Manufacturer discounts.
51	7. Manufacturer drug switching programs.

(3) Identify pharmaceutical purchasing programs in other states and participate with other states in consolidated bids for economies of scale and other ways to reduce prices or cooperate with other states or regional
consolidated bids for economies of scale and other ways to reduce prices or cooperate with other states or regional
consortia in the bulk purchase of prescription drugs.
(4) Create a pharmaceutical benefit program to offer a pharmaceutical benefit option for individual State
residents, county and local governments, and private entities with employees in Delaware.
(5) Negotiate price discounts and rebates on prescription drugs with prescription drug manufacturers or group
purchasing organizations. Price discounts and rebates may be achieved through a contract with a multi-state purchasing
cooperative.
(6) Contract with a prescription drug claims processor to adjudicate pharmacy claims and transmit
pharmaceutical prices to pharmacies.
(7) Determine pharmaceutical prices and reimburse or replenish pharmacies for prescription drugs dispensed
or transferred.
(8) Develop a system for allocating and distributing the operational costs of the Pharmaceutical Purchasing
Section and any rebates obtained to participating State agencies and participants in the pharmaceutical benefit program.
(9) Adopt and implement 1 or more preferred drug list.
(e) The Pharmaceutical Purchasing Section may do any of the following:
(1) Establish the terms and conditions for a pharmacy to enroll in a program created under this section. A
licensed pharmacy that is willing to accept the terms and conditions established by the Pharmaceutical Purchasing
Section may apply to enroll in the program.
(2) The program may contract with vendors as necessary to utilize discount purchasing programs, including
but not limited to group purchasing organizations established to meet the criteria of the Nonprofit Institutions Act, 15
U.S.C. 13c, or that are exempt under the Robinson-Patman Act, 15 U.S.C. 13.
(f) Except as allowed under subsection (g) of this section, the Pharmaceutical Purchasing Section may not do any
of the following:
(1) Contract with a pharmacy benefit manager,
(2) Establish a State-managed wholesale or retail drug distribution or dispensing system.
(3) Require pharmacies to maintain or allocate separate inventories for prescription drugs dispensed through a
program.

82	(1) Contracting with a pharmacy benefit manager and directly or indirectly with such pharmacy networks as
83	the Pharmaceutical Purchasing Section considers necessary to maintain statewide access to the program.
84	(2) Negotiating with prescription drug manufacturers on behalf of the Pharmaceutical Purchasing Section.
85	(3) For individuals who are eligible for Medicare Part D prescription drug coverage to participate in the
86	program.
87	(h)(1) In connection with the duties of the Pharmaceutical Purchasing Program, the Chief of Pharmaceutical
88	Purchasing has the power to administer oaths and compel the attendance of witnesses and the production of documents by
89	the filing of a praecipe for a subpoena with the Prothonotary of any county of this State.
90	(2) A subpoena issued under this section shall be effective throughout this State.
91	(3) Service of such a subpoena shall be made by any sheriff of this State by serving the person to whom it is
92	addressed personally or by leaving it at such person's usual place of abode with a person of suitable age and discretion
93	residing therein,
94	(4) The Chief of Pharmaceutical Purchasing's authority to subpoena witnesses and documents outside the
95	State exists to the maximum extent permissible under federal law.
96	(5) Failure to obey a subpoena shall be punishable under the Rules of the Superior Court.
97	(i)(1) The Chief of Pharmaceutical Purchasing shall prepare an annual report that includes all of the following:
98	a. The analysis required under paragraph (d)(1) of this section.
99	b. The status of the requirements under paragraphs (d)(2) through (d)(9) of this section.
100	(2) By August 1, the Chief of Pharmaceutical Purchasing must submit the report required under paragraph
101	(i)(1) of this section to the President Pro Tempore of the Senate and the Speaker of the House of Representatives, with
102	copies to all members of the General Assembly, the Governor, the Director and the Librarian of the Division of
103	Research of Legislative Council, and the Delaware Public Archives.
104	§ 6318A. Delaware Prescription Benefit Program.
105	(a) The Chief of Pharmaceutical Purchasing shall create the Delaware Prescription Benefit Program to offer a
106	pharmaceutical benefit option for all of the following:
107	(1) Individual State residents.
108	(2) County and local governments in this State.
109	(3) Private entities with 1 or more employees working in this State.
110	(b)(1) An individual or entity under subsection (a) of this section may apply to participate in the Delaware
111	Prescription Benefit Program using the application provided by the Pharmaceutical Purchasing Program.

112	(2) The Pharmaceutical Purchasing Program may charge participants a nominal fee to participate in the
113	program.
114	(3) The Pharmaceutical Purchasing Program shall issue a prescription drug identification card to participants
115	of the Delaware Prescription Benefit Program.
116	(c)(1) The Pharmaceutical Purchasing Program shall provide a mechanism to calculate and transmit the program
117	prices for prescription drugs to a pharmacy. The pharmacy shall charge the participant the Delaware Prescription Benefit
118	Program price for a prescription drug.
119	(2) A pharmacy may charge the participant the professional dispensing fee set by the Pharmaceutical
120	Purchasing Program.
121	(3) Prescription drug identification cards issued under this section must contain the information necessary for
122	proper claims adjudication or transmission of price data.
123	(d) The Prescription Drug Purchasing Fund is established separate and distinct from the General Fund. The
124	Prescription Drug Purchasing Fund shall consist of moneys appropriated to the fund by the General Assembly and moneys
125	received by the Pharmaceutical Purchasing Program for the purposes established in this section in the form of gifts, grants,
126	bequests, endowments, or donations. The moneys in the Prescription Drug Purchasing Fund are continuously appropriated
127	to the Pharmaceutical Purchasing Program and shall be used to purchase prescription drugs, reimburse pharmacies for
128	prescription drugs, and reimburse the Pharmaceutical Purchasing Program for the costs of administering the Pharmaceutical
129	Purchasing Program, including contracted services costs, computer costs, professional dispensing fees paid to retail
130	pharmacies, and other reasonable program costs. Interest earned on the Prescription Drug Purchasing Fund must be credited
131	to the Prescription Drug Purchasing Fund.
132	Section #. Amend § 5210, Title 29 of the Delaware Code by making deletions as shown by strike through and
133	insertions as shown by underline as follows:
134	§ 5210. Authority and duties of the State Employee Benefits Committee.
135	The Except for pharmaceutical purchasing under § 6317A of this title, the State Employee Benefits Committee
136	established by § 9602 of this title shall have has the following powers, duties duties, and functions under this chapter:
137	(1) Control and management of the State employees group health insurance program provided for in this
138	chapter.
139	(2) Authority to establish the State employees group health insurance program on an insured or self-insured
140	basis.

141	(3) Selection of the carriers or third-party administrators deemed to offer the best plan to satisfy the interests
142	of the State and its employees and pensioners in carrying out the intent of this chapter.
143	(4) Authority to adopt rules and regulations for the general administration of the State employees group health
144	insurance program.
145	(5) Authority to make and enter into any and all contracts with any agency of the State, or any outside agency,
146	for the purpose of assisting in the general administration of this chapter.
147	(6) Whenever the balance of the fund equity of the Employees' Health Insurance Fund exceeds the amount
148	determined by the State Employee Benefits Committee to be sufficient to meet anticipated claims plus a reasonable
149	reserve, the State Employee Benefits Committee, in its sole discretion, may transfer the excess balance or any part of it
150	to the OPEB Fund, established pursuant to Chapter 52B of this title, to provide a source for the future payment of
151	retiree health benefits or the Disability Insurance Program, pursuant to Chapter 52A of this title.
152	Section #. Amend § 9602, Title 29 of the Delaware Code by making deletions as shown by strike through and
153	insertions as shown by underline as follows:
154	§ 9602. State Employee Benefits Committee.
155	(b) The Except for pharmaceutical purchasing under § 6317A of this title, the State Employee Benefits Committee
156	shall have the following powers, duties duties, and functions:
157	(1) With the exception of deferred compensation pursuant to Chapter 60A of this title, and any other
158	investment or retirement savings plan, control control, and management of all employee benefit coverages including
159	health-care insurance and blood bank, pursuant-to under Chapters 51 and 52 of this title; state employees group life
160	insurance pursuant to Chapter 32 of Title 18; and all other currently existing and future employee benefits coverages,
161	including but not limited to all forms of flexible benefits, dental, vision, prescription, long-term care and disability
162	coverages.
163	(2) Selection of all carriers or third-party administrators necessary to provide coverages to State employees.
164	(3) Authority to contract on an insured or self insured basis.
165	(4) Authority to adopt rules and regulations for the general administration of the employee benefit coverages.
166	(5) Authority to make and enter into any and all contracts with any agency of the State, or any outside agency
167	for the purpose of assisting in the general administration of this section.
168	Section #. Amend § 9604, Title 29 of the Delaware Code by making deletions as shown by strike through and
169	insertions as shown by underline as follows:
170	§ 9604. Duties of the Secretary of Human Resources.

171	The duties of the Secretary of Human Resources under this chapter shall include: include all of the following:
172	(1) The Except for pharmaceutical purchasing under § 6317A of this title, the placement of all insurance with
173	such carriers as the Committee deems appropriate.
174	(2) The operation of the self-insurance fund, when and if a self-insurance fund shall be established by the
175	Committee for the operation of a self-insurance program.
176	(3) Centralized responsibility for the operation of the State employee benefits program vested in a single
177	agency with an adequate staff of legal, actuarial and administrative personnel.
178	(4) The Except for pharmaceutical purchasing under § 6317A of this title, the establishment and operation of
179	an open bid procedure to be maintained for purchasing new employee benefits coverage from carriers and renewing
180	existing contracts with such carriers which will permit the free forces of market competition to operate to the benefit of
181	the state employee benefits coverage programs.
182	(5) The Except for pharmaceutical purchasing under § 6317A of this title, the maintenance in a safe and
183	secure place of all policies with commercial insurers and all records necessary and pertinent thereto.
184	(6) The maintenance in a safe and secure place of all records, accounts, claims files, statistical studies studies.
185	and other such records and documents necessary and proper in the administration of any self-insured program, when
186	and if the Committee deems it necessary and proper to utilize same.
187	(7) Prompt notification to insurance carriers or third party administrators of the names and other necessary
188	data related to the employees and pensioners covered by State employee benefits programs and of all changes and
189	additions thereto, and payment of such obligations as are incurred pursuant to this section, including the cost of
190	premium or subscription charges for insurance coverage upon the written request of any State employee or pensioner
191	from the funds appropriated therefore and, in the event such appropriated funds are inadequate, pay such additional
192	sums as may be required from those moneys in the General Fund not otherwise appropriated.
193	(8) Communication to State employees of all State employee benefits coverages and any additions or changes
194	of benefits affecting State employees.
195	(9) Authority Except for pharmaceutical purchasing under § 6317A of this title, authority to act as agent of the
196	State to enter into a contract or contracts with the carrier or carriers for benefits programs for State employees and
197	pensioners.

other necessary data related to the employees and pensioners covered by the State employees health insurance program

and of all changes and shall pay such obligations as are incurred pursuant to this section, including the cost of premium

(10) Prompt notification of the health-care insurance carrier or third party administrator of the names and

198

199

200

or subscription charges for health-care insurance coverage upon the written request of any state employee or pensioner from the funds appropriated therefore and, in the event such appropriated funds are inadequate, pay such addition sums as may be required from those moneys in the General Fund not otherwise appropriated.

## **SYNOPSIS**

LC: DIG: CM 5971500230

201

202

203

# 29 Del. C. § 6303A

This document is current through 82 Del. Laws, ch. 218.

Delaware Code Annotated > Title 29 State Government (Pts. I — XI) > Part VI Budget, Fiscal, Procurement and Contracting Regulations (Chs. 61 - 76) > Chapter 63A Office of Management and Budget (§§ 6301A - 6316A)

# § 6303A. General powers and duties.

The Director of the Office of Management and Budget shall have the following powers, duties and functions:

- (1)To audit, inspect and examine the accounts and the affairs of and the records of any agency of this State at such times as deemed expedient for the supervision of the budget and shall require all agencies to submit estimates showing the amounts and purposes of all anticipated expenditures to be made at the time or period in which such expenditures are to be made by an agency; such estimates of anticipated expenditures to be submitted in such form as the Director may prescribe;
- (2)To require such fiscal reports, statements of balances on hand, estimates of receipts and information in any manner pertinent to the fiscal affairs of this State from the Secretary of Finance, Auditor of Accounts or any other agency of the State in such form as the Director shall prescribe for the purposes of this chapter;
- (3)To design and install in any agency of this State such accounting records and procedures as shall be adequate for the control of the fiscal affairs of this State and require any agency of this State to follow and comply with the accounting procedures so designed;
- (4)To report to the General Assembly and the Attorney General in writing any irregular, Illegal or improper financial administration or transaction;
- (5)To make recommendations to the General Assembly concerning the control of all state property and of accounts receivable and concerning a system of recording and accounting for the improvement and control of the fiscal practices and the adoption of a fiscal policy by the State;
- (6)To consider and approve or disapprove transfers between appropriations contained in the budget as defined in this chapter and for which purpose it is provided that such transfers shall become effective only upon approval of the Director;
- (7)To authorize, with the concurrence of the Controller General, special funds that are deemed necessary while the General Assembly is not in session, and until such time as legislation may be introduced at the next session of the General Assembly and acted upon;
- (8)To prepare and administer the State's program of public works and major capital improvement projects;
- (9)To prepare, and from time to time revise, an inventory listing the State's real property and facilities of all kinds;
- (10)To supervise, direct and account for the administration and operation of the Office, its divisions, subdivisions, offices, functions and employees;
- (11)To appoint and fix the salary of, with the written approval of the Governor, the following administrators, who may be removed from office by the Director with the written approval of the

Governor and who shall have such powers, duties and functions in the administration and operation of the Office as may be assigned by the Director:

- a.A Management Services Administrator who shall be qualified by training and experience to perform the duties of the office.
- **b.**A Facilities Management Administrator who shall be qualified by training and experience to perform the duties of the office.
- c.A Government Support Services Administrator who shall be qualified by training and experience to perform the duties of the office.
- d.An Administrator of Budget Development, Planning and Administration who shall be qualified by training and experience to perform the duties of the office.
- (12)To appoint such additional personnel as may be necessary for the administration and operation of the Office within such limitations as may be imposed by law;
- (13)To establish, consolidate or abolish such divisions, subdivisions and offices within the Office or transfer or combine the powers, duties and functions of the divisions and other groups within the Office, with the written approval of the Governor, as may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;
- (14)To make and enter into any and all contracts, agreements or stipulations, to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever they shall be deemed by the Director necessary or desirable in the performance of the functions of the Office and whenever funds shall be available for such purpose, with the specific requirement that all necessary legal services be provided pursuant to Chapter 25 of this title;
- (15)To delegate any of the Director's powers, duties or functions to an individual in paragraph (11) of this section, except the power to remove employees of the Department or to fix their compensation;
- (16)To establish and to promulgate such rules and regulations governing the administration and operation of the Office as may be deemed necessary by the Director and which are not inconsistent with the laws of this State;
- (17)To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Office;
- (18)To adopt an official seal or seals for the Office;
- (19)To accept and to receive, in furtherance of the Office's function, funds, grants and services from the federal government or its agencies;
- (20)To assume such other powers, duties and functions as the Governor may assign which are not otherwise inconsistent with the laws of this State;
- (21)To prepare, in cooperation with the division directors, a proposed budget for the operation of the Office, to be submitted for the consideration of the Governor and the General Assembly. The Office shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly, with the provision that special funds may be used in accordance with approved programs, grants and appropriations;
- (22)To administer and manage a statewide human resource information system, and upon implementation, serve as the administrator of all data and processes supported by the system throughout the State, including all government agencies, school districts, Delaware State University and Delaware Technical and Community College; and

## 29 Del. C. § 6303A

(23)To be responsible for the clerical administration of all state pension funds. The Director of the Office of Management and Budget shall have the authority to recommend to the Governor such changes as may be desirable in the pension system for employees in the classified service.

History	Н	is	to	rv
---------	---	----	----	----

75 Del. Laws, c. 88, § 4; 81 Del. Laws, c. 66, § 4.

**Annotations** 

# **Notes**

#### Revisor's note.

Section 67 of 81 Del, Laws, c. 66, provided: "The provisions of this legislation shall be effective July 1, 2017."

#### Effect of amendments.

81 Del. Laws, c. 66, deleted former (11)d. and e. and redesignated former (11)f. as present (11)d.

# Research References & Practice Aids

#### Delaware Administrative Code.

Environmentally preferred purchasing policy, CDR 19-4000-4000.

#### **Hierarchy Notes:**

29 Del. C. Pt. VI, Ch. 63A

Delaware Code Annotated Copyright © 2019 The State of Delaware All rights reserved.

End of Document

# 29 Del. C. § 8903

This document is current through 82 Del. Laws, ch. 219.

Delaware Code Annotated > Title 29 State Government (Pts. I — XI) > Part VIII Departments of Government (Chs. 79 — 90D) > Chapter 89 Department of Correction (Subchs. I — II) > Subchapter I General Provisions (§§ 8901 — 8915)

# § 8903. Powers, duties and functions — Commissioner.

#### The Commissioner shall:

- (1)Supervise, direct and account for the administration and operation of the Department, its bureaus, subbureaus, offices, functions and employees;
- (2)Appoint and fix the salary, with the written approval of the Governor, of the chiefs of the Department's Bureaus and other office heads, who may be removed from office by the Commissioner with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Commissioner.
- (3)Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;
- (4) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the bureaus, subbureaus and offices within the Department as the Commissioner, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;
- (5)Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Commission necessary or desirable, in the performance of the functions of the Department, and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;
- (6)Delegate any of the Commissioner's powers, duties or functions to a chief of a bureau, except the power to remove employees of the Department or to fix their compensation;
- (7)Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Commissioner and which are not inconsistent with the laws of this State;
- (8) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;
- (9)Adopt an official seal or seals for the Department;
- (10)Adopt a plan for use of personnel within the correctional system;
- (11)Adopt a plan to identify and classify very low risk inmates convicted of misdemeanors and sentenced to serve no more than 24 months of incarceration and to provide an ongoing list of such inmates eligible for release to alternative programs of punishment which do not include incarceration. Such plan shall include a provision that all inmates sentenced to serve no more than 24 months of incarceration shall be so identified and classified within 90 days of their commitment to an institution supervised by the Department;

(12)Devise and adopt a plan to provide weapons training to all probation and parole officers. Such plan shall include an option for each such officer to carry a firearm, after successful completion of a course in weapons, during work in the field. Said course of training shall meet or exceed the standards established by the Council on Police Training. Such plan shall be in operation no later than September 15, 1992;

(13)Upon an order of the court directing the Department to debit moneys in an inmate account in accordance with Chapter 88 of Title 10, the Department shall, to the extent adequate funds are available, transfer such moneys to the court. To the extent an inmate's account does not have adequate funds to comply with the court's order, the Department shall debit the inmate's account for future payment to the court. The Department shall retain records of an inmate's account upon the release of the prisoner from the custody of the Department if such account has a negative balance pursuant to a court order under Chapter 88 of Title 10. The outstanding balance of such an account shall be reinstated should that person be committed to the custody of the Department at some future time. Notwithstanding the above, no court order pursuant to Chapter 88 of Title 10, shall have priority over charges or debits pursuant to § 6536(b) or (c) of Title 11; and

(14)Provide feminine hygiene products to inmates at no cost in facilities maintained by the Department. For purposes of this paragraph, "feminine hygiene products" means tampons and sanitary napkins, for use in connection with the menstrual cycle.

# History

60 Del. Laws, c. 251, § 14; 61 Del. Laws, c. 15, §§ 1, 2; 62 Del. Laws, c. 283, § 1; 64 Del. Laws, c. 108, § 15; 64 Del. Laws, c. 304, § 1; 68 Del. Laws, c. 414, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 411, § 2; 78 Del. Laws, c. 305, § 4; 81 Del. Laws, c. 436, § 1.

**Annotations** 

#### Notes

#### Effect of amendments.

78 Del. Laws, c. 305, effective July 5, 2012, in (2), deleted "following" preceding "chiefs", inserted "of the Department's Bureaus", inserted "other" and deleted former (2)a. and b.; and deleted "which plan will prohibit the placement or assignment of guards of 1 sex within housing units for inmates of the opposite sex unless the Commissioner shall determine that emergency conditions require such placement" from the end of (10).

81 Del. Laws, c. 436, effective Sept. 13, 2018, added (14) and made other minor related changes.

## **Research References & Practice Aids**

#### Cross references.

Debiting of prisoner's inmate account for unpaid court fees, § 8804 of Title 10.

#### **Hierarchy Notes:**

29 Del C. Pt. VIII, Ch. 89, Subch, I

Delaware Code Annotated Copyright © 2019 The State of Delaware All rights reserved

End of Document